BILL NO. S-80-12-03

SPECIAL ORDINANCE NO. S-164-80

AN ORDINANCE approving an Agreement between the City of Fort Wayne and Gibson/Tourney/Kim, Inc. for architectural services.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain Agreement dated November 24, 1980, between the City of Fort Wayne, Indiana, by and through its Mayor and Gibson/Tourney/Kim, Inc. architects for:

> Architectural design, planning and engineering for Civic Center Phase II Parking Garage to be located in Block III of the Fort Wayne Redevelopment Commission's Civic Center Renewal Project,

at a total cost of $192,000.00, all as more particularly set forth in said Agreement which is on file in the Office of the Mayor and is by reference incorporated herein and made a part hereof, be and the same is in all things hereby ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

COUNCILMAN

APPROVED AS TO FORM AND LEGALITY DECEMBER 5, 1980.

CAROL A. ANGEL
Associate City Attorney

Read the first time in full and on motion by Stier, seconded by Van Dunten, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____ M.,E.S.T.

DATE: 12-9-80

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third ~~time~~ in full and on motion by Stier, seconded by Eisbart, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	5	4			
BURNS		X			
EISBART	X				
GiaQUINTA	X				
NUCKOLS	X				
SCHMIDT, D.		X			
SCHMIDT, V.	X				
SCHOMBURG		X			
STIER		X			
TALARICO	X				

DATE: 12-23-80

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-164-80 on the 23rd day of December, 1980.

ATTEST: (SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Vivian G. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of December, 1980, at the hour of 10:00 o'clock A M.,E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 29th day of December 1980, at the hour of 11 o'clock A M.,E.S.T.

WINFIELD C. MOSES, JR.
MAYOR

Hold. 12/23/80

Carl O'Neil to be here

192, no PARKING GARAGE

BILL NO. S-80-12-03

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN ORDINANCE approving an Agreement between the City of Fort Wayne and Gibson/Tourney/Kim, Inc. for architectural services

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

JAMES S. STIER, CHAIRMAN	
MARK GiaQUINTA, VICE CHAIRMAN	
BEN EISBART	
PAUL M. BURNS	
DONALD J. SCHMIDT	

CONCURRED IN

DATE 12/22/80 CHARLES W. WESTERMAN, CITY CLERK

Council 12/9/80 10-62-27 12/3/80

AGREEMENT BETWEEN OWNER AND ARCHITECT

AGREEMENT made this 24th day of November in the year of Nineteen Hundred and Eighty BETWEEN THE OWNER, CITY OF FORT WAYNE, INDIANA, City-County Building, One Main Street, Fort Wayne, Indiana 46802, and THE ARCHITECT, GIBSON/TOURNEY/KIM, INC., 519 Tennessee Avenue, Fort Wayne, Indiana 46815, FOR THE FOLLOWING PROJECT:

Architectural design, planning and engineering for Civic Center Phase II Parking Garage to be located in Block III of the Fort Wayne Redevelopment Commission's Civic Center Renewal Project, said parking garage Project having a fixed limit of Project Cost of Three Million Eight Hundred Thousand Dollars ($3,800,000.00) and a fixed limit of Construction Cost of Three Million Five Hundred Thousand Dollars ($3,500,000.00).

THE OWNER AND ARCHITECT AGREE AS SET FORTH BELOW:

ARTICLE I

ARCHITECT'S SERVICES AND RESPONSIBILITIES

BASIC SERVICES

The Architect's Basic Services consist of the five phases described in Paragraphs 1.1 through 1.5 and include normal structural, mechanical and electrical engineering services and any other services included in Article 16 as part of Basic Services.

1.1 SCHEMATIC DESIGN PHASE

1.1.1 It is agreed and understood by the parties to this Agreement that the Architect shall review the program furnished by the Owner to ascertain the requirements of the Civic Center Phase II Parking Garage Project and shall review the understanding of such requirements with the Owner. The Architect shall develop data by meeting with principal users of the garage facility, adjacent property owners and designers of other related downtown projects (i.e. Radisson Hotel, Civic Center Complex, Semi-Mall, Conservatory and Retail) and shall review said data with the Owners.

1.1.2 The Architect will develop and evaluate vehicular traffic and pedestrian traffic data pertinent to the Project and related and adjacent uses, and review said data with the Owner. The Architect will analyze the terms of an Agreement with the developers of the Radisson Hotel, and evaluate the same in connection with the garage Project and will coordinate its plan and design with and in response to the terms of said Agreement.

1.1.3 The Architect, at the direction of the Owner, will confer with the developers of the Radisson Hotel and their Architect for the purpose of coordinating the design and use of the garage, the Radisson Hotel, and the Civic Center Phase I parking garage.

1.1.4 The Architect will develop and evaluate energy-conservation data pertinent to the Project and related and adjacent uses, and will review said data with the Owner, for the purpose of incorporating energy conservation features into its plan and design.

1.1.5 The Architect will analyze the terms of an Agreement between Owner and the Economic Development Agency (EDA) and will coordinate its plan and design in accordance with the intent of said Agreement.

1.1.6 The Architect shall provide a preliminary evaluation of the program based upon its findings and data and provide a Project Budget in terms of said program, subject to the limitations set forth in 3.2.1.

1.1.7 The Architect will provide a schedule for the Project which shall be reviewed with the Owner.

1.1.8 The Architect shall review with the Owner alternative approaches to the design and construction of the Project (a garage accommodating approximately 600 cars), including approaches incorporating energy-conservation features to the greatest extent possible, within the confines of the budget limitations set forth in 3.2.2.

1.1.9 The Architect will develop preliminary alternate plans for 9,000 square feet of retail shop and tourist information center space along the Calhoun Street frontage of the parking garage.

1.1.10 Based upon a mutually agreed-upon program for the garage which shall include the design and planning of vehicular and pedestrian traffic flow, parking layouts, operational methods and management, construction budget, equipment, aesthetics, energy conservation, security, maintenance, and design alternatives, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of project components.

1.1.11 The Architect shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

1.2 DESIGN DEVELOPMENT PHASE

1.2.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program or Project budget,

the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials, energy conservation features and such other elements as have been enumerated in the Schematic Design Program.

1.2.2 The Architect will design any sewage treatment facility so that a certificate can be obtained from the Environmental Protection Agency (EPA) as required by Section 106 of the Public Works and Economic Development Act of 1965.

1.2.3 The Architect will design the Project to conform to all Federal, State and local standards regarding air and water pollution.

1.2.4 The Architect will design the Project to provide access by the handicapped to facilities to be used by the public, in accordance with Public Law 90-480, as amended, 42 USC 4151-4156, and any applicable state and local standards relating to such access.

1.2.5 The Architect shall submit to the Owner a further Statement of Probable Construction Cost.

1.3 CONSTRUCTION DOCUMENTS PHASE

1.3.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project, the Architect shall prepare, for approval by the Owner and by the Economic Development Administration (EDA), Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

1.3.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor. It is understood by the Architect that the Board of Works of the City of Fort Wayne shall be acting with and on behalf

of the Owner during the Construction Documents phase and bidding and negotiation phase and Construction phase of the Project. It is understood by the Architect that this will in no way alter or affect its primary responsibility and direct relationship to the Owner; however, the Architect acknowledges and agrees to work with personnel of the Fort Wayne Board of Works throughout the remaining phases of the Project.

1.3.3 The Architect shall incorporate into the Construction Documents a designation of all of the different types of construction which will be used for the Project, such as Building, Heavy, or Highway, in accordance with all local and state laws and practices. For this purpose either the plans, the specifications, or both shall clearly delineate where each type stops and another starts.

1.3.4 The Architect shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.3.5 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

1.3.6 All forms for instructions to bidders, general conditions, contracts, bid bond, performance bond, and payment bond shall be approved by the EDA.

1.3.7 The Architect agrees that all negotiated Contracts (except those of $10,000 or less) awarded by Owner shall include a provision to the effect that Owner, the Controller General or the United States, or any of their duly authorized representatives, shall have access to any documents of the Contractor which are directly pertinent to the specific grant program involved in the Project, for the purpose of

making an audit, examination, excerpts, and transcriptions.

1.4 BIDDING OR NEGOTIATION PHASE

1.4.1 The Architect, following the Owner's and the EDA's approval of the Construction Documents and of the Owner's approval of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and assist in awarding and preparing contracts for construction, by attending bid openings, preparing and submitting tabulations of bids, making recommendations as to contract awards, reviewing proof of bidders qualifications, and recommending approval or disapproval thereof.

1.4.2 All contract documents shall be subject to EDA approval.

1.5 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.5.1 The Construction Phase will commence with the award of the Construction Contract and will terminate when the final Certificate for Payment is issued to the Owner, and the Owner has made final payment to the Contractors.

1.5.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

1.5.3 The Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with Subparagraph 1.5.17.

1.5.4 The Architect shall make periodic visits to the site to familiarize himself with the progress and quality of the Work and shall conduct periodic on-site job meetings to ascertain if the Work is proceeding in compliance with plans, specifications and the Contract Documents. The Architect shall further make specific recommendations to the Owner to effect a resolution of any problems insofar as coordination and prosecution of the Work are concerned. On the basis of his observations, the Architect shall keep the Owner informed of the progress and quality of the Work by submitting a report not less frequently than quarterly to the Owner covering the general progress of the Work and describing any problems or factors leading to delay, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

1.5.5 The Architect shall also select, employ and direct one or more Project Representative(s) to provide more extensive representation at the site and to serve as the project inspector(s). Through the observations by such Project Representatives, the Architect shall provide further protection for the Owner against defects and deficiencies in the Work; ~~the duties, responsibilities and limitations of authority of such Project Representative(s) are set forth in Exhibit A, attached to this Agreement.~~ The Architect shall be responsible for any damages arising from negligence or omissions in the performance of the Project Representative(s).

1.5.6 The Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The Architect shall have the responsibility of working with and coordinating the Work of the various contractors to insure that the Work is performed in an efficient and orderly sequence. The Architect shall further have the responsibility of

working with and coordinating the Work on the garage, to coordinate with and be compatible with the connection of the parking facility to the Radisson Hotel. The Architect shall be responsible for any damages arising from defects in design, but shall not be responsible for the acts or omissions of the contractors, subcontractors or any other persons performing any of the Work.

1.5.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

1.5.8 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

1.5.9 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site as provided in Subparagraph 1.5.4 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has made any examination

to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.5.10 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.5.11 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter and judge, the Architect shall endeavor to secure faithful performance by both the Owner and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

1.5.12 The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents. The Architect's decisions on any other claims, disputes or other matters, including those in question between the Owner and the Contractor, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

1.5.13 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or

not such Work be then fabricated, installed or completed.

1.5.14 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.5.15 The Architect shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have the authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

1.5.16 The Architect shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related docuements required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment. The Architect shall assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Owner and approval by the EDA Regional Office.

1.5.17 The Architect shall prepare sepia "as-built" drawings after completion of the Project. Reproducible originals shall be furnished to Owner within sixty (60) days after final completion of construction and performance of the final inspection.

1.5.18 The Architect will comply with all applicable provisions of the Regulations of the U.S. Department of Commerce (Part 8 of

Subtitle 15 of the Code of Federal Regulations) issued pursuant to the Civil Rights Act of 1964, in regard to nondiscrimination in employment because of race, religion, color, sex or national origin.

1.5.19 The extent of the duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction shall not be modified or extended without written consent of the Owner, the Contractor and the Architect.

1.6 ADDITIONAL SERVICES

The following Services are not included in Basic Services. They shall be provided if authorized or confirmed in writing by the Owner, and they shall be paid for by the Owner as provided in Article 5 of this Agreement, in addition to the compensation for Basic Services.

1.6.1. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work, when such cause for replacement is due to cause not within the control of the Architect.

1.6.2 Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

1.6.3 Providing services after issuance to the Owner of the final Certificate for Payment.

1.6.4 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

1.7 TIME

1.7.1 The Architect shall perform Basic and Additional Services

as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval, a schedule for performance of the Architect's services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by Owner, shall not be adjusted or, except for reasonable cause, be exceeded by the Architect, without the prior written consent of the owner.

1.7.2 The Architect shall perform services in connection with the Schematic Design, Design Development, Construction Documents and Bidding or Negotiation Phase according to the following timetable:

SCHEDULE: After approval by EDA of Grant to Owner, Architect shall:

(a) Complete preliminary plans and associated cost estimates within 21 days;

(b) Complete final plans, specifications, and cost estimates within 90 days;

(c) Obtain required State and local approvals and permits within 30 days; and

(d) Complete proposed contract documents in a form sufficient for soliciting bids for construction of this Project within 10 days.

ARTICLE 2

THE OWNER'S RESPONSIBILITIES

2.1 The Owner, working with the Architect, pursuant to Section 1.1.1, shall develop full information regarding requirements for the Project including a program, which shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

2.2 If the Owner provides a budget for the Project it shall include contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.3 The Owner shall designate, when necessary, a representative authorized to act in the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services.

2.4 The Owner shall furnish a legal description and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths. The Architect shall examine the information provided by the Owner as to its adequacy for the proposed Project, and shall notify Owner of any additional requirements or revisions which are required for the Project.

2.5 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the Owner.

2.6 The services, information, and reports required by Paragraphs 2.4 and 2.5 shall be furnished at the Owner's expense, and shall be examined, approved and confirmed by the Architect as to the adequacy for the proposed Project.

2.7 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Architect.

2.8 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect's services and of the Work.

2.9 The Owner shall be responsible for furnishing to the EDA one set of copies of "as-built" drawings prepared by the Architect upon completion of the Project.

ARTICLE 3

CONSTRUCTION COST

3.1 DEFINITION

3.1.1 The Construction Cost shall be the total cost to the Owner of all elements of the Project designed or specified by the Architect.

3.1.2 The Construction Cost shall include at current market rates, including a reasonable allowance for overhead and profit, the cost of labor and materials furnished by the Owner and any equipment which has been designed, specified, selected or specially provided for by the Architect.

3.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

3.2 RESPONSIBILITY FOR CONSTRUCTION COST

3.2.1 Evaluations of the Owner's Project budget, Statements of Probable Construction Cost and Detailed Estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor

the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any Statement of Probable Construction Cost or estimate or evaluation prepared by the Architect.

3.2.2 In view of the fact that a fixed limit of Three Million Five Hundred Thousand Dollars ($3,500,000.00) has been established for the Construction Cost, the Architect shall be permitted to include deductive alternatives and contingencies for design, bidding and price escalation, to determine what materials, equipment and component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.

3.2.3 If a Project budget or fixed limit of Construction Cost is exceeded by the lowest bona fide bid or negotiated proposal less deductive alternatives, the Owner shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiating of the Project within a reasonable time, (3) if the Project is abandoned, terminate in accordance with Paragraph 10.2, or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), as a result of a fixed limit of Construction Cost having been established as a condition of this Agreement, the Architect, without additional charge, shall modify the Drawings and Specification as necessary to comply with the fixed limit.

ARTICLE 4

REIMBURSABLE EXPENSES

5.1 Reimbursable Expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the expenses listed in the following Subparagraph:

4.1.1 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

ARTICLE 5

PAYMENTS TO THE ARCHITECT

5.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

5.1.1 Payments to the Architect for Basic Services shall be made monthly and shall be in proportion to services performed within each phase of services, on the basis set forth in Article 14.

5.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICE

5.2.1 Payments on account of the Architect's Additional Services as defined in 1.6 and for Reimbursable Expenses as defined in Article 4 shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

5.3 PAYMENTS WITHHELD

5.3.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect is legally liable.

5.4 PROJECT SUSPENSION OR TERMINATION

5.4.1 If the Project is suspended or abandoned in whole or in part for more than three months, the Architect shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable

Expenses then due.

ARTICLE 6

ARCHITECT'S ACCOUNTING RECORDS

6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 7

OWNERSHIP AND USE OF DOCUMENTS

7.1 Drawings and Specifications as instruments of service are and shall remain the property of the Owner. The Owner shall not use the Drawings or Specifications on other projects or for completion of this Project by others provided the Architect is not in default under this Agreement.

7.2 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's rights.

ARTICLE 8

ARBITRATION

8.1 All claims, disputes and other matters in question between the parties to this Agreement or the breach thereof, may, upon mutual consent of all parties be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Architect, the Owner,

and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under the prevailing arbitration law.

8.2 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

8.3 The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 9

TERMINATION OF AGREEMENT

9.1 This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

9.2 This Agreement may be terminated by the Owner upon at least seven (7) days' written notice to the Architect in the event that the Project is permanently abandoned.

9.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for all services performed to the termination date, together with Reimbursable Expenses then due.

ARTICLE 10

ARCHITECT'S-CONSULTANT'S INSURANCE AND INDEMNITY

10.1 Architect agrees to carry a broad policy of errors and omissions insurance coverage, including but not limited to, contractural liability (hold harmless) coverage, with per claim limit of liability totaling no less than Five Hundred Thousand Dollars ($500,000.00) and with deductible per claim limit of no more than Ten Thousand Dollars ($10,000.00) on any policy, which policy or policies shall cover Architect's obligations under Paragraph 1.5.5. Consultant agrees to carry a broad policy of errors and omissions insurance coverage, including but not limited to, contractural liability (hold harmless) coverage, with per claim limit of liability totaling no less than Two Million Dollars ($2,000,000.00) and with a deductible per claim limit of no more than One Hundred Thousand Dollars ($100,000.00) on any policy, which policy or policies shall cover Consultant's obligations to Owner hereunder including Consultant's obligations under ~~Paragraph 1.5.5~~ Article 15 of this Agreement. Such policy or policies shall be satisfactory to Owner and shall be issuable by a company satisfactory to Owner, and shall not be cancellable until thirty (30) days after written notice of cancellation is given by the carrier to the Owner. A copy of the complete policy or policies and a certificate evidencing such policy or policies shall be furnished to Owner within twenty (20) days from the date of execution of this Agreement.

ARTICLE 11

MISCELLANEOUS PROVISIONS

11.1 This Agreement shall be governed by the laws of the State of Indiana.

11.2 The terms in this Agreement shall have the same meaning as those in AIA Document 201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

11.3 As between the parties to this Agreement: as to all acts or failures to act by any party to this Agreement, any applicable

statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of issuance of the final Certificate for Payment.

ARTICLE 12

SUCCESSORS AND ASSIGNS

12.1 The Owner and Architect respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor Architect shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

ARTICLE 13

EXTENT OF AGREEMENT

13.1 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or greements, either written or oral. This Agreement may be amended only by written instrument signed by Owner and Architect.

ARTICLE 14

BASIS OF COMPENSATION

14.1 The Architect shall provide professional services for the Project in accordance with the terms and conditions of this Agreement. The Owner shall compensate the Architect in accordance with the terms and conditions of this Agreement and for the Basic Services described in 1.1 and 1.5 and Article 15, and for the Re-

imbursable Expenses described in Article 4, the Architect shall be compensated on the basis of an agreed Maximum Fee of One Hundred Ninety-two Thousand Dollars ($192,000.00) to be paid in accordance with Article 5 of this Agreement in the percentages which are as follows:

Schematice Design Phase	15%
Design Development Phase.	20%
Construction Documents Phase.	40%
Bidding or Negotiation Phase.	5%
Construction Phase.	20%

14.2 For Additional Services as described in Paragraph 1.6, the Architect shall be compensated based upon its Direct Personnel Expense, which is defined as the direct salaries of all the Architect's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leaves, holidays, vacations, pensions and similar contributions and benefits.

14.3 Direct Personnel Expense for principals and employees shall be at the following rates:

1. Principals - flat rate:

Edward J. Tourney	$65.00
Dick L. Gibson	$65.00
E. James Ebert	$65.00
Howard Linders	$75.00

2. Employees - (3.0 times Direct Personnel Expense)

Direct Personnel Expense:

Clerical	$ 6.00
junior draftsman	$ 7.50
draftsman	$10.00
chief draftsman	$11.50
engineer	$10.70
senior engineer	$13.90

ARTICLE 15

OTHER CONDITIONS OR SERVICES

15.1 It is understood and agreed by the Architect and Owner that the following personnel assignments shall be made and maintained throughout the term of this Agreement:

(a) Project Manager - Edward J. Tourney, PE
Gibson/Tourney/Kim, Inc.

(b) Project Architect - Dick L. Gibson, AIA
Gibson/Tourney/Kim, Inc.

(c) Associate Engineer - E. James Ebert, PE
Carl Walker & Associates, Inc.

It is agreed by Architect and Owner that Carl Walker & Associates, Inc. will be consulting with the Architect on this Project and will have a major role in developing the programming/schematic design phase. Carl Walker & Associates, Inc. will be on site and available to the Owner during the programming/schematic design phase. It is agreed by Owner, Architect and Carl Walker & Associates, Inc. that the compensation of Carl Walker & Associates, Inc. shall be borne solely by the Architect as it has been included in Owner's compensation of the Architect. Carl Walker & Associates, Inc. will, however, be responsible to the Owner for its services rendered pursuant to this agreement and Carl Walker & Associates, Inc.'s agreement with the Architect. The Architect has further represented to the Owner that no separate operations consultant need be engaged by the Owner, and that Carl Walker & Associates, Inc. will fully attend to all requirements for the Project pertaining to the operations system and analysis.

15.2 The Architect has represented and agreed to the Owner that the construction phase of the Project will be administered by Edward J. Tourney, PE, of Gibson/Tourney/Kim, Inc.

15.3 The following services are to be included as Basic Services for which Architect shall be compensated under the provisions of Paragraph 14.1:

15.3.1 Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner.

15.3.2 Providing services in connection with the work of a construction manager or separate consultant(s) retained by the Architect.

15.3.3 Providing Detailed Estimates of Construction Cost.

15.3.4 Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given , and are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.

15.3.5 The Architect shall furnish a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining paroperty; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; and locations, dimensions and complete data pertaining to existing buildings, other improvements and trees.

15.3.6 The Architect shall furnish the services of soil engineers or other consultants when such services are deemed necessary by the Architect, and shall supervise the performance of such services. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and

appropriate professional recommendations.

15.3.7 The Architect shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

15.3.8 The Architect shall pay, as part of the Basic Services to be provided, normal expense of travel when authorized by the Owner in connection with the Project; long distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project.

15.3.9 The Architect shall pay expense of all reproductions, postage and handling of Drawings, Specifications and other documents, data processing and photographic production techniques incurred by Architect and any of Architect's consultants.

15.3.10 The Architect shall provide to Owner a minimum of three (3) copies of plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the Project.

15.3.11 The Architect and Consultant shall pay the cost of insurance coverage, pursuant to Article 10 of this Agreement, as part of the Basic Services to be provided under said Agreement.

ARTICLE 16

CONTINGENCY OF AGREEMENT

16.1 It is understood and agreed by the Architect and Owner that this Agreement is contingent upon receipt by Owner of an EDA Grant in the amount of One Million Eight Hundred Thousand Dollars ($1,800,000.00) for financing of the Project.

16.2 In the event said Grant is not received by Owner, this Agreement shall not take effect, and no compensation shall be owing by Owner to Architect and/or any of Architect's consultants for services performed or expenses incurred with respect to the Project.

16.3 It is understood and agreed by the Architect, Consultant and Owner that this Agreement is also contingent upon approval of the Fort Wayne Common Council.

Signed By:

CITY OF FORT WAYNE

By: _____
Win Moses, Jr., Mayor

ATTEST:

By: Lucille S. Schrock

GIBSON/TOURNEY/KIM, INC.

By: Edward J. Tourney
its Vice Pres

ATTEST:

By: _____
its Vice President Secretary

CARL WALKER & ASSOCIATES, INC.

By: E. James Ebert
its Vice-President

ATTEST:

By: _____
its ~~Acting Director~~ Redevelopment Commission

Council
12/9/80

70-62-30 H.I
12/3/80

AGREEMENT BETWEEN OWNER AND CONSULTANT

AGREEMENT made this 24th day of November in the year of Nineteen Hundred and Eighty BTWEEN THE OWNER, CITY OF FORT WAYNE, INDIANA, City-County Building, One Main Street, Fort Wayne, Indiana 46802, and THE CONSULTANT, CARL WALKER & ASSOCIATES, INC., 2121 Hudson Avenue, Kalamazoo, Michigan 49008, FOR THE FOLLOWING PROJECT:

> Architectural design, planning and engineering for Civic Center Phase II Parking Garage to be located in Block III of the Fort Wayne Redevelopment Commission's Civic Center Renewal Project, said parking garage Project having a fixed limit of Project Cost of Three Million Eight Hundred Thousand Dollars ($3,800,000.00) and a fixed limit of Construction Cost of Three Million Five Hundred Thousand Dollars ($3,500,000.00).

THE OWNER AND CONSULTANT AGREE AS SET FORTH BELOW:

ARTICLE I

CONSULTANT'S SERVICES AND RESPONSIBILITIES

It is agreed and understood by the parties to this Agreement that the Consultant shall consult and act with Gibson/Tourney/Kim, Inc., 519 Tennessee Avenue, Fort Wayne, Indiana 46805 (hereinafter referred to as "Architect") in rendering services pursuant to a certain Agreement between Owner and Architect, dated November 24, 1980, in connection with architectual design, planning, and engineering of the Project.

It is further agreed that Consultant shall have a major role

in developing the programming/schematic design phase of the Project. Consultant's specific services and responsibilities with regard to the programming/schematic design phase shall be set out more fully in a separate written Agreement between Consultant and Architect; however it is agreed that Consultant shall be on site and available to Owner during said phase.

ARTICLE 2

~~ARCHITECT'S~~ CONSULTANT'S INSURANCE AND INDEMNITY

~~Architect and~~ Consultant agrees to carry and to pay the cost of a broad policy of errors and omissions insurance coverage, including but not limited to, contractural liability (hold harmless) coverage, with per claim limit of liability totaling no less than Two Million ~~Five Hundred Thousand~~ Dollars (2,000,000.00) ~~($2,500,000.00)~~ and with deductible per claim limit of no more than One Hundred ~~Fifty~~ Thousand Dollars ($100,000.00) ~~($50,000.00)~~ on any policy, which policy or policies shall cover ~~Architect's and~~ Consultant's obligations to Owner hereunder. Such policy or policies shall be satisfactory to Owner and shall be issuable by a company satisfactory to Owner, and shall not be cancellable until thirty (30) days after written notice of cancellation is given by the carrier to the Owner. A copy of the complete policy or policies and a certificate evidencing such policy or policies shall be furnished to Owner within twenty (20) days from the date of execution of this Agreement.

ARTICLE 3

MISCELLANEOUS PROVISIONS

3.1 This Agreement shall be governed by the laws of the State of Indiana.

3.2 The terms in this Agreement shall have the same meaning

as those in AIA Document 201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

3.3 As between the parties to this Agreement: as to all acts or failures to act by any party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant Date of Substantial Completion of the Work, and as to any acts or failures to act occurring after the relevant Date of Substantial Completion, not later than the date of issuance of the final Certificate for Payment.

ARTICLE 4

SUCCESSORS AND ASSIGNS

4.1 The Owner and Consultant respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

ARTICLE 5

EXTENT OF AGREEMENT

5.1 This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or greements, either written or oral. This Agreement may be amended only by written instrument signed by Owner and Consultant.

ARTICLE 6

BASIS OF COMPENSATION

It is agreed that compensation of Consultant shall be borne solely by Architect as it has been included in Owner's compensation of the Architect. Consultant will, however, be responsible to the Owner for its services rendered pursuant to this Agreement and to Consultant's Agreement with Architect, and will fully attend to all requirements for the Project pertaining to the operations system and analysis.

ARTICLE 7

OTHER CONDITIONS OR SERVICES

Personnel Assignment:

A. The following personnel assignment shall be maintained throughout the term of this Agreement: E. James Ebert, PE, shall serve as Associate Engineer for said Project.

B. Direct Personnel Expese: The parties agree that Direct Personnel Expense for principals and employees shall be at the rates set out in Paragraph 14.3 of the Agreement between Owner and Architect, and incorporated herein by reference.

C. Contingency of Agreement: It is understood and agreed by the parties that this Agreement is contingent upon approval of Fort Wayne Common Council and upon receipt by Owner of an EDA Grant in the amount of One Million Eight Hundred Thousand Dollars ($1,800,000.00) for financing of the Project.

In the event said approval and/or said Grant is not received by Owner, this Agreement shall not take effect, and no compensation shall be owing by Owner to Architect and/or any of Architect's consultants for services performed or expenses incurred with respect to the Project.

Signed By:

CITY OF FORT WAYNE

By: _____
Win Moses, Jr., Mayor

ATTEST:

By: Lucille S. Schuck

CARL WALKER & ASSOCIATES, INC.

By: E. James Ebert

its Vice-President

ATTEST:

By: _____

its Acting Director
Redevelopment Commission

TITLE OF ORDINANCE AGREEMENT BETWEEN OWNER AND ARCHITECT ON THE CIVIC CENTER PH. II PARKING GARAGE

5093

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-80-12-03

SYNOPSIS OF ORDINANCE AGREEMENT BETWEEN OWNER (CITY OF FORT WAYNE, INDIANA) AND ARCHITECT, GIBSON/TOURNEY/KIM, INC., FOR ARCHITECTURAL DESIGN, PLANNING AND ENGINEERING FOR THE NEW CIVIC CENTER PHASE II PARKING GARAGE TO BE LOCATED IN BLOCK III OF THE FORT WAYNE REDEVELOPMENT COMMISSION'S CIVIC CENTER RENEWAL PROJECT. (ALSO, ATTACHED IS AGREEMENT BETWEEN OWNER (CITY OF FORT WAYNE, INDIANA) AND CONSULTANT, CARL WALKER & ASSOCIATES, INC. FOR REFERENCE ONLY)

(AGREEMENT BETWEEN OWNER AND ARCHITECT & AGREEMENT BETWEEN OWNER AND CONSULTANT ATTACHED)

EFFECT OF PASSAGE PLANNING AND DESIGN WORK PRIOR TO CONSTRUCTION OF CIVIC CENTER PHASE II PARKING GARAGE

EFFECT OF NON-PASSAGE DELAY IN CONSTRUCTION PLANS

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) $192,000.00 TO BE PAYABLE AS FOLLOWS: 50% FROM EDA GRANT MONIES AND 50% LOCAL, I. E., A COMBINATION OF GENERAL OBLIGATION BONDS, REVENUE BONDS, UDAG PAYBACK AND TAX INCREMENT FINANCING.

ASSIGNED TO COMMITTEE Finance

EP